

Appeal from decision of Colorado State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease C-25029-Acq.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals -- Oil and Gas Leases: Termination

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

2. Oil and Gas Leases: Reinstatement

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment the day it is due does not constitute reasonable diligence.

3. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Termination

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the

lessee's control which occurred at or near the anniversary date of the lease. The fact that appellant "commutes" to his place of business in California from his home in Illinois, does not justify late payment.

APPEARANCES: Donald L. Darrow, pro se.

#### OPINION BY ADMINISTRATIVE JUDGE LEWIS

Donald L. Darrow appeals from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated April 23, 1982, denying a petition for reinstatement of oil and gas lease C-25029-Acq. In its decision BLM stated that appellant's lease automatically terminated on April 1, 1982, for failure to pay the annual rental, due as of that date. BLM further stated that payment was not received until April 7, 1982. A copy of appellant's check in the file shows that it was dated April 1, 1982.

On April 21, 1982, appellant submitted a timely petition for reinstatement in which he stated that he "commutes" to California from Illinois to work and was out of town when the notice of rental due was sent to his home address. In denying the petition for reinstatement, BLM determined that reliance upon a courtesy notice from BLM does not justify late payment. BLM also noted that a check executed April 1, 1982, and mailed from out of state could not possibly have reached the Colorado State Office before 4 p.m. on the same day.

On appeal, appellant states that he realizes that his payment arrived late at the BLM office. He asserts that his place of business is in California and his home is in Illinois and that his mail is not received in a timely fashion. (Presumably, appellant is referring to receipt of a BLM courtesy notice.) He explains that he has no control over his estranged wife with regard to the proper handling of his mail. Appellant also notes that the Internal Revenue Service accepts the postmark as evidence of timely filing.

[1] An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976); 43 CFR 3108.2-1(a). Because appellant's rental payment was not received on April 1, 1982, the due date, the lease terminated automatically. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the lessee shows that failure to pay on time was either justifiable or not due to lack of reasonable diligence. 30 U.S.C. § 188(c) (1976); 43 CFR 3108.2-1(c).

[2] Even assuming that the check was mailed on April 1, 1982, 1/ we find that appellant has not exercised reasonable diligence. Reasonable diligence normally requires mailing the rental payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2). Appellant's rental payment was due on April 1, 1982. Mailing a rental payment the day it is due does not constitute reasonable diligence. Liberty Oil & Gas Corp., 64 IBLA 277 (1982); I. W. Lovelady, Lessee, 64 IBLA 123 (1982).

[3] Untimely payment of the annual rental may be justifiable for purposes of reinstatement if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. James M. Chudnow, 62 IBLA 13 (1982); Arnold L. Gilberg, 57 IBLA 46 (1981).

We have also held on numerous occasions that a business or pleasure trip does not constitute a circumstance ordinarily beyond an individual's control and does not ordinarily prevent a diligent individual from making payment or arranging for others to make payment in his or her absence. James M. Chudnow, *supra*; Arnold Gilberg, *supra*. If appellant's employment required him to be absent from home for extended periods of time, and he could not depend on his estranged wife to make the payments, he might have considered changing his address of record for the lease to his business address. Also, reliance on the business practices of other Governmental agencies in accepting a postmark as the day of delivery does not justify late payment. Overthrust Oil and Gas Corp., 52 IBLA 119, 83 I.D. 38 (1981).

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1/ The file contains a copy of a memorandum dated May 17, 1982, from the Land Law Examiner, Colorado State Office, which offers the following explanation for assuming that appellant mailed his payment on Apr. 1, 1982: "When a late rental payment comes in, it is the normal procedure in this office to keep the envelope that it came in because the postmark on the envelope is so important. However, in this instance the cashier inadvertently tossed out the envelope.

"In the adjudication of this case, the following assumptions were made:

"1. Since the check was executed on April 1, 1982, the check was probably mailed on April 1 or later. The lessee was given the benefit of the doubt, and April 1 was used as the date lessee mailed in the rental payment.

"2. The check was not stamped with the usual receiving/date stamp. However, the check was stamped with a date stamp on April 7, 1982, as part of the procedure for the daily bank deposit. The Accounting Advice [sic] #323594 was prepared 2 days later on April 9, 1982. April 7 was used as the date of receipt by the Colorado State Office.

"3. It is not clear from any of the correspondence from the lessee whether he mailed the rental payment from Los Angeles when on a business trip or from Geneva, Illinois (his address of record). In either case, it was assumed that a payment mailed on April 1 from either location could not arrive in Denver by 4:00 p.m. on April 1, 1982."

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Anne Poindexter Lewis  
Administrative Judge

We concur:

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Gail M. Frazier  
Administrative Judge

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Bruce R. Harris  
Administrative Judge